

IC 6-9-23

Chapter 23. Allen County Food and Beverage Tax

IC 6-9-23-1

Application of chapter

Sec. 1. This chapter applies to a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000).

As added by P.L.77-1986, SEC.1. Amended by P.L.12-1992, SEC.50.

IC 6-9-23-2

Definitions applicable

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

As added by P.L.77-1986, SEC.1.

IC 6-9-23-3

Adoption of ordinance; certified copy to commissioner of department of state revenue; application; termination

Sec. 3. (a) After January 1 but before June 1 of a year, the fiscal body of a county may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on those transactions described in section 4 of this chapter.

(b) If a fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

(c) If a fiscal body adopts an ordinance under subsection (a), the county food and beverage tax applies to transactions that occur after June 30 of the year in which the ordinance is adopted.

(d) The tax terminates June 30, 2000 unless there is a legal challenge that requests, or has the effect of requesting, the invalidation, revocation or repeal of a tax imposed under IC 6-9-33 or the time for bringing such a challenge under IC 6-9-33-3(c) has not expired. If there is such a legal challenge to a tax imposed under IC 6-9-33 or if the time for bringing such a legal challenge under IC 6-9-33-3(c) has not expired, the tax imposed under this chapter shall remain in effect and shall not terminate until the earlier of either:

- (1) two (2) years after the retirement of debt that was incurred under section 8 of this chapter;
- (2) the expiration of the time for bringing a legal challenge, under IC 6-9-33-3(c), to a tax imposed under IC 6-9-33 without the filing of such a challenge; or
- (3) the final conclusion of any legal challenges to a tax imposed under IC 6-9-33 should such challenges fail to cause the invalidation, revocation or repeal of a tax imposed under IC 6-9-33.

As added by P.L.77-1986, SEC.1. Amended by P.L.8-2000, SEC.1.

IC 6-9-23-4

Transactions taxable; exceptions

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the county in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

As added by P.L.77-1986, SEC.1. Amended by P.L.257-2003, SEC.36.

IC 6-9-23-5**Tax rate; gross retail income included**

Sec. 5. The county food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

As added by P.L.77-1986, SEC.1.

IC 6-9-23-6**Imposition, payment, and collection of tax; filing return**

Sec. 6. The tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax under this chapter may be made separately or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the

department of state revenue.

As added by P.L.77-1986, SEC.1.

IC 6-9-23-7

Monthly payment of taxes received to county treasurer

Sec. 7. The amounts received from the county food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state to the county treasurer upon warrants issued by the auditor of state.

As added by P.L.77-1986, SEC.1.

IC 6-9-23-8

Coliseum expansion fund; deposits

Sec. 8. (a) If a tax is imposed under section 3 of this chapter, the county treasurer shall establish a coliseum expansion fund. The county treasurer shall deposit in this fund all amounts received from the tax imposed under this chapter. Money in this fund may be appropriated only to retire any bonds issued, loans obtained, or lease payments incurred under IC 36-1-10 (referred to in this chapter as "obligations") to remodel, expand, improve, or acquire:

(A) an athletic and exhibition coliseum in existence before the effective day of an ordinance adopted under section 3 of this chapter; or

(B) if approved by an ordinance of the county fiscal body (other than an appropriations ordinance), an athletic and exhibition coliseum in existence before January 1, 1998.

(b) Obligations entered into for the acquisition, expansion, remodeling, and improvement of an athletic and exhibition coliseum shall be retired by using money collected from a tax imposed under this chapter.

As added by P.L.77-1986, SEC.1. Amended by P.L.38-1998, SEC.7; P.L.46-1998, SEC.8; P.L.8-2000, SEC.2.

IC 6-9-23-9

Coliseum expansion fund deposits; agreement; payment of obligations

Sec. 9. (a) Subject to the limitation of section 3(d) of this chapter, the county may enter into an agreement under which amounts deposited in, or to be deposited in, the coliseum expansion fund are pledged to payment of obligations issued to finance the remodeling, expansion, or maintenance of an athletic and exhibition coliseum under section 8 of this chapter.

(b) With respect to obligations for which a pledge has been made under subsection (a), the general assembly covenants with the holders of these obligations that:

(1) this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of the tax imposed under this chapter; and

(2) this chapter will not be amended in any manner that will change the purpose for which revenues from the tax imposed

under this chapter may be used;
as long as the payment of any of those obligations is outstanding.
As added by P.L.77-1986, SEC.1.